

JACK GOODWIN

IBLA 82-446

Decided November 23, 1982

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease application. M 51484.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases:  
Applications: Drawings

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered; and applicant's failure to check these items on the form cannot be cured by a simple addendum where the rights of the second-drawn applicant have intervened.

APPEARANCES: Donald T. McMillan, Esq., Garden City, New York, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Jack Goodwin has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated January 4, 1982, rejecting his noncompetitive oil and gas lease application, M 51484. Appellant's application was drawn with first priority for parcel MT 138 in the May 1981 simultaneous oil and gas lease drawing.

In its January 1982 decision, BLM rejected appellant's application because he had failed to answer questions (d) through (f) on the reverse side of the application form, in accordance with 43 CFR 3112.2-1(a). That regulation provides that an application to lease "consists of a simultaneous oil and gas lease application on a form approved by the Director, Bureau of Land Management, completed, signed and filed pursuant to the regulations in this subpart." (Emphasis added.) 43 CFR 3112.2-1(a). The portion of the application form left uncompleted appears as follows:

UNDERSIGNED CERTIFIES AS FOLLOWS (check appropriate boxes):  
 [Original in italics.]

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(d) Does any party, other than the applicant and those identified herein as other parties in interest, own or hold any interest in this application or the offer or lease which may result? Yes ☐ No ☐

(e) Does any agreement, understanding, or arrangement exist which requires the undersigned to assign, or by which the undersigned has assigned or agreed to assign, any interest in this application, or the offer or lease which may result, to anyone other than those identified herein as other parties in interest? Yes ☐ No ☐

(f) Does the undersigned have any interest in any other application filed for the same parcel as this application? Yes ☐ No ☐

In his statement of reasons for appeal, appellant contends that his application cannot be rejected where 43 CFR 3112.2-1 does not "explicitly" require answers to questions (d) through (f) on the application form and the form itself is ambiguous. Appellant asserts that the form is ambiguous because where an applicant has not placed the name(s) of other parties in interest on the form, as required to do so, "there is no need to answer these questions since they are only redundant of the information previously requested." <sup>1/</sup> Appellant states that he is fully qualified to hold an oil and gas lease and submits an affidavit, dated March 1, 1982, in which he answers question (d) through (f) in the negative.

[1] This Board has consistently held that an oil and gas lease application is not completed in accordance with 43 CFR 3112.2-1 or the instructions on the application form itself where questions (d) through (f) are left unanswered. Carol V. Miller, 66 IBLA 394 (1982), and cases cited therein; Vincent M. D'Amico, 55 IBLA 116 (1981), appeal dismissed, D'Amico v. Watt, Civ. No. 81-2050 (D.D.C. Aug. 31, 1981). Answers to questions (d) through (f) provide essential information regarding an applicant's qualifications. Dennis M. Joy, 66 IBLA 260 (1982). While 43 CFR 3112.2-1 does not explicitly require that an applicant answer questions (d) through (f) on the application

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<sup>1/</sup> Appellant states that the Department has admitted that the application form (Form 3112-1 (July 1980)), which he used, served no rational purpose, by virtue of the fact that it was subsequently discarded and replaced with an automated form (Form 3112-6a (June 1981)) in which the applicant merely "certifies" to the appropriate negative response to questions (d) through (f), without the necessity of checking boxes. While the new form promotes the more efficient processing of lease applications, the Department has merely changed the manner in which an applicant supplies the necessary information. The ultimate purpose, in either case, remains the same, i.e., to require an applicant to attest to the fact that he is qualified, in certain ways, to hold an oil and gas lease. The prior manner of checking boxes fully served that purpose.

form, we have held that it is included in the requirement that the application be "completed." William C. Reuling, 59 IBLA 226 (1981). Moreover, we have not found the form itself ambiguous. It is quite explicit as to what is required, instructing an applicant to "check appropriate boxes." (Original in italics.) In addition, questions (d) through (f) are not redundant of the requirement that an applicant supply the names of other parties in interest. Indeed, questions (d) and (e) apply to the interest of anyone other than those identified as other parties in interest. Questions (d) through (f) are simply not answered where an applicant does not supply the names of other parties in interest.

Furthermore, appellant's failure to check all the items on the form cannot be cured by a simple addendum. Giving an unqualified first drawn applicant the opportunity to make an amended filing would infringe on the rights of the second and third drawn applicants. See Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067, 1070 (10th Cir. 1976); accord Moss v. Andrus, Civ. No. 78-1050 (10th Cir., Sept. 20, 1978).

Finally, appellant contends that he is being deprived of an oil and gas lease without due process of law and that BLM waived any defects in the application by virtue of failing to reject the application until well after its submission. We can find nothing in the actions of BLM which does not comport with due process. Furthermore, 43 CFR 3112.6-1 specifically provides that rejection of an application in part where it is "not filed in accordance with § 3112.2 of this title" (43 CFR 3112.6-1(a)), is an "adjudicatory process which follows selection." BLM's failure to reject appellant's application until after its selection cannot be treated as a waiver. We conclude that BLM properly rejected appellant's application. Leroy G. Boudreaux, 62 IBLA 255 (1982).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski  
Administrative Judge

We concur:

Bruce R. Harris  
Administrative Judge

Douglas E. Henriques  
Administrative Judge

